

Tennessee Ethics Commission
April 6, 2009
Minutes

The Tennessee Ethics Commission met on Monday April 6, 2009, at 8:30 a.m. in Room 30 of the Legislative Plaza. Commissioners Charles H. Farmer, Nathaniel S. Goggans, John K. King, Linda W. Knight, and Dianne F. Neal were present. Chair Larry Brown was absent. Commissioner Farmer moved that Commissioner King act as Chair pro tem. The motion was seconded and passed unanimously. Chair pro tem King called the meeting to order at 8:34.

March 10, 2009 Minutes

After discussion, the Commission directed staff to state in the minutes when motions were seconded. After further discussion, and on motion duly made and seconded, the minutes were unanimously approved as amended and corrected.

Agenda item 4 (tab 12(b))¹ – Requests for Reconsideration

DAD of Tennessee

The Commission heard from Tony Gottlieb who was present as DAD of Tennessee's Executive Director. After discussion of DAD of Tennessee's reconsideration request, Commissioner Farmer moved to reconsider the previously assessed seven hundred fifty dollar (\$750) conditional civil penalty and waive the unpaid 2008 registration fee. The motion was seconded and failed one (1) to four (4), with Commissioner Farmer voting yes. The Commission determined DAD of Tennessee had ignored previously received notices.

Agenda item 3 (tab 5) – Informal Penalty Assessment Proceedings

Tennessee Association of Air Carrier Airports

After discussion, Commissioner Knight moved to find no good cause and exercise the Commission's discretion to impose no penalty for failure to pay employer registration fees for two (2) lobbyists. The motion was seconded. After discussion, the motion passed four (4) to one (1), with Commissioner Farmer voting no.

Wicky Shepherd

After discussion, Commissioner Farmer moved to assess no penalty upon Mr. Shepherd for failing to submit his 2008 disclosure of interest statement due to information received regarding Mr. Shepherd's medical condition. After seconding, the motion passed unanimously. After discussion, Chair pro tem King moved not to refer the unpaid, previously assessed Class 1 civil penalty to the Office of the Attorney General and Reporter for collection. The motion was seconded and passed unanimously.

Jimmy Fox

After discussion, Commissioner Knight moved to assess a nine thousand two hundred fifty dollar (\$9,250) conditional Class 2 civil penalty against Mr. Fox for failure to file his 2008 disclosure of interest form. The motion was seconded and passed unanimously.

¹ The March meeting book of documents was re-used for the April meeting, with the result that the April agenda item numbers do not correspond to the tab numbers in the book.

Agenda item 4 (tab 12) – Reconsideration Requests

Brain Injury Association of Tennessee

After discussion, Commissioner Knight moved to reduce the previously assessed four hundred dollar (\$400) conditional civil penalty for the Brain Injury Association of Tennessee's failure to pay its 2008 registration fee within thirty (30) days of registering as the employer of a lobbyist to two hundred dollars (\$200). The motion was seconded. After discussion, the motion passed unanimously.

Judicial Conference Committee on Compensation and Retirement

After discussion, Chairman pro tem King moved to deny reconsideration on the previously assessed four hundred dollar (\$400) conditional civil penalty for failure to pay the 2008 employer registration fee within thirty (30) days of registering as the employer of a lobbyist. After second, the motion passed four (4) to one (1), with Commissioner Knight voting no.

Tony Adams

After discussion, Commissioner Farmer moved to waive the previously assessed Class 2 conditional civil penalty for failure to file a 2008 disclosure of interest statement on the condition that Mr. Adams pay the Class 1 conditional civil penalty within thirty (30) days after the order's entry, and, if the Class 1 conditional civil penalty remains unpaid thirty (30) days after the entry of the order, a Class 2 conditional civil penalty of nine thousand, two hundred fifty dollars (\$9,250) be assessed. The motion was seconded. After further discussion, the motion passed unanimously.

Jonathan Dagley

After discussion, Commissioner Goggans moved to deny Mr. Dagley's reconsideration request on the previously assessed one hundred dollar (\$100) class 2 conditional civil penalty for failure to timely file his 2008 disclosure of interest statement. The motion was seconded and passed unanimously.

Jonathan Katsiros

After discussion, the Commission determined that the previously entered conditional Class 1 civil penalty order was defective and directed staff to correct and reissue the order.

Agenda item 5 (tab 13) – Informal Class 2 Civil Penalty Assessment Proceedings

Jonathan Katsiros

After discussion, the Commission reached consensus to not assess a Class 2 civil penalty if the Class 1 conditional civil penalty is paid before the Commission meeting at which Mr. Katsiros' Class 2 penalty is considered and Chair pro tem King moved to defer consideration of a Class 2 civil penalty against Mr. Katsiros for thirty (30) days. The motion was seconded. After further discussion, the motion passed unanimously.

Fred Wilcoxin

After discussion, Commissioner Goggans moved to impose a nine thousand two hundred fifty dollar (\$9,250) conditional Class 2 civil penalty for Mr. Wilcoxin's failure to file his disclosure of interest statement within thirty five (35) days of receiving an assessment letter. The motion was seconded and passed unanimously.

Agenda item 6 (tab 14) – Informal Penalty Proceedings – Lobbyists and Employers of Lobbyists

Bad Wolf MMA

After discussion, Commissioner Knight moved to find no good cause and assess a seven hundred fifty

dollar (\$750) civil penalty for failure to timely file the employer expenditure report due November 14, 2008. The motion was seconded and passed unanimously.

Belew Group

After discussion, Commissioner Farmer moved to find no good cause and assess a five hundred twenty five dollar (\$525) conditional civil penalty for failure to timely file the employer expenditure report due November 14, 2008. The motion was seconded and motion passed unanimously.

Agenda item 10 (tab 6) – Rules Chapter 0580-04 Penalty Proceedings

After discussion and debate, Commissioner Farmer moved to revise paragraph (2) of Rule 0580-04-.07 to provide that a contested case is to be initiated by a “request” rather than a “petition.” The motion failed for lack of a second.

After discussion, Commissioner Farmer moved to delete the language in paragraph (2) of Rule 0580-04-.07 requiring that a contested case proceeding be initiated by “filing a document in the form prescribed by the Commission.” The motion was seconded. After discussion, Commissioner Goggans offered an amendment to the motion to provide that the Rule will refer to a non-mandatory “suggested form” that a person could use to initiate a contested case. The motion passed unanimously as amended.

After discussion, Commissioner Farmer moved to revise Rules Chapter 0580-04 to provide that an affected person may request a contested case within a certain time from “receipt” of a Commission order instead of from “issuance” of the order. After discussion, the motion was withdrawn.

After discussion, Commissioner Goggans moved to postpone further discussion on Rules Chapter 0580-04. After the motion was seconded and further discussion took place, Chair pro tem King directed persons proposing a change to Rules Chapter 0580-04 to present a document describing the change before the next meeting.

After discussion, Chair pro tem King directed staff to change the Rule to provide that a person has fifteen (15) days to request informal reconsideration of a conditionally assessed civil penalty and to use the term “assessment proceeding” instead of “show cause proceeding.”

After discussion, the Commission voted unanimously to pass Commissioner Goggans’ motion to postpone discussion on Rules Chapter 0580-04 until the next meeting.

After discussion, the Commission directed staff to include Tenn. Code Ann. § 3-6-205 and its predecessor in the next Commission meeting book.

Agenda item 11 (tab 7) – Rules Chapter 0580-03 Complaint Proceedings

After discussion, Chair pro tem King directed staff to ask Senior Attorney General Janet Kleinfelter to submit a memorandum and/or be available for Commission questions at the next Commission meeting.

After further discussion, Commissioner Knight moved to delete the initial portion of paragraph (6) of Rules Chapter 0580-03 and begin the paragraph, “Any party to the proceeding , , , ,” The motion was seconded. After discussion, the motion passed unanimously.

After discussion, the Commission directed staff to include in the acknowledgement letters sent to

complainants and alleged violators, a statement that if the complaint is dismissed, the Commission will inform them, and if the complaint is not dismissed, the Commission will provide additional information as permitted by law. After discussion, Commissioner Knight moved to delete the second sentence of subparagraph (a) of Rule 0580-03-.04(3) and include in the first sentence that the alleged violator shall receive a copy of the complaint and the complainant shall receive an acknowledgment letter. The motion was seconded. After discussion, the motion was adopted unanimously.

Agenda item 8 (tab 16) - Request for Public Disclosure of Memoranda Tabbed Items 4, 6(a), and 7(a).

Mr. Courtney Pearre, who had previously requested these documents, was present at the meeting. After discussion, Mr. Pearre withdrew his request to receive *Item 4*, the memorandum regarding 2008 random lobbyist audits. After discussion, Commissioner Farmer moved to waive any privileges not already waived regarding *Items 6(a)* and *7(a)*, memoranda on Rules Chapter 0580-04 and Rules Chapter 0580-03, and provide these items to Mr. Pearre. The motion was seconded and passed unanimously.

Commissioner Neal read a statement into the record.

The meeting was adjourned at 3:31 p.m.